Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Petition of Ameritech for Forbearance from	)	
Dominant Carrier Regulation of its Provision of	)	CC Docket No. 99-65
High Capacity Services in the Chicago LATA	)	
	)	

REPLY COMMENTS OF AMERITECH

Ameritech [1] submits this reply to comments on its Petition for Forbearance from Dominant Carrier Regulation of its Provision of High Capacity Services in the Chicago LATA.

As a preliminary matter, Ameritech would address the criticism voiced by several parties that it is inappropriate for the Commission to consider an *ad hoc* request for relief such as Ameritech's.[2] They argue that the issues associated with forbearance from dominant carrier regulation of price cap local exchange carriers' ("LECs'") provision of access services generally are already before the Commission in its access reform proceeding as the second phase of its "market-based approach" to access reform.[3] Ameritech agrees that the Commission should adopt a broad pricing flexibility framework applicable to the industry as a whole. In fact, last fall, the Commission specifically asked that the record in its access reform docket be "refreshed" in that

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[1] Ameritech means: Ameritech Illinois, Ameritech Indiana, Ameritech Michigan, Ameritech Ohio, and Ameritech Wisconsin.

[2] See MCI at 3-5, ALTS at 2-3, AT&T at 21 (note 59), Focal at 3, McLeod at 3, NEXTLINK at 1.

[3] See *In the Matter of Access Charge Reform*, CC Docket Nos. 96-262, *et al.*, First Report and Order, FCC 97-158 (released May 16, 1997).

regard;[4] and, as a result, the Commission already has had substantial input on the way in which the next phase of its market-based approach can be appropriately configured for the LEC industry. However, the Commission has yet to adopt a broad national framework; and this delay has made it necessary for LECs to file (and the Commission act upon) individual requests when circumstances dictate a change in regulatory paradigm.

Such circumstances are present in the Chicago LATA, justifying the Commission's expeditious consideration of this petition.[5] As demonstrated by the facts included with Ameritech's original petition and with this reply, Ameritech lacks market power in the provision of high capacity services in the Chicago LATA. Therefore, forbearance from dominant carrier regulation of those services is required under Section 10 of the Communications Act, as amended. Moreover, claims that the Commission should delay granting the requested relief until all barriers to local competition have been removed have no statutory support. Therefore, the Commission should act quickly to grant the relief requested in the petition so that customers might realize the benefits of the resulting enhancement of the competitive process.

I. THE DATA PROPERLY DEMONSTRATE THAT AMERITECH LACKS MARKET POWER IN THE PROVISION OF HIGH CAPACITY SERVICES IN THE CHICAGO LATA.

In their comments, Ameritech's opponents did not challenge the proposition that lack of market power in the provision of relevant services satisfies the statutory prerequisite under Section 10 for forbearance from dominant carrier regulation of those services. Nor could they,

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[4] *Commission Asks Parties to Update and Refresh the Record for Access Charge Reform and Seeks Comment on Proposals for Access Charge Reform Pricing Flexibility*, CC Docket Nos. 96-262, *et al.*, FCC 98-256 (released October 5,1998).

[5] Ameritech is also preparing a petition to request a change in the regulation of its provision of high capacity services in other of its major metropolitan areas.

since these parties themselves are beneficiaries of the Commission's own finding that their lack of market power justifies forbearance of dominant carrier regulation of their provision of interstate services.

However, these parties devote substantial effort in misplaced criticism of the data presented by Ameritech to support its case. In particular, opponents contest the reliability of Ameritech's data by countering with unsupported "apples/oranges" data of their own.[6] In addition, they misinterpret the data presented by Ameritech and the purposes for which it is offered.

The attached analysis of Dr. Debra J. Aron of the Law and Economics Consulting Group[7] effectively refutes all this criticism. In particular, the Aron Reply Report shows, among other things:

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[6] It is interesting that AT&T and MCI, in particular, offer no "corrected" information about the extent of their own competitive presence. AT&T ignores the extent to which its own network was expanded by the $11.3 billion acquisition of Teleport. Yet AT&T's own annual shareholder report notes that, in 1998, its local service revenues grew 73.2% "due primarily to TCG's growth in private line, switch usage and facilities, interconnection, and data/Internet services." It also reports that it "now serves 19,246 buildings with 5,536 on net." Also, MCI chose to ignore Dr. Aron's reference to MCI's own boasts that it can reach 75% of North American businesses with its own network -- a figure which is presumably higher in an area such as Chicago. (Aron Report, included with Ameritech Petition, at 13-14.) In this light, MCI's discussion of the state regulatory status of high capacity services in Illinois is disingenuous -- and somewhat misleading. It is true that competitive classifications are self-initiated by the carrier and that they do not represent a "finding" by the Illinois Commerce Commission ("ICC"). However, the ICC has never issued an order finding that an Ameritech competitive declaration with respect to high capacity services has been inappropriate. To the contrary, the ICC notified Ameritech of its intent not to investigate Ameritech's January, 1995, filing declaring base rate and high capacity services competitive in Access Area A (downtown Chicago). Moreover, contrary to MCI's representation, the ICC's October, 1995, order did not find that all competitive services should reclassified as non-competitive. That order involved only Band B and C calling and operator services for business customers, and the order was stayed with respect to all except operator services.

[7] "An Analysis of Market Power and the Provision of High Capacity Access in the Chicago LATA: Reply to Comments of Intervening Parties" by Dr. Debra J. Aron ("Aron Reply Report") included as Attachment A.

- That reliance on Quality Strategies market share data is reasonable and that evidence produced to contradict this data is itself ambiguous and unsupported,
- That the criticisms of the market definitions used in Dr. Aron's initial report are contradictory and unfounded,
- That Ameritech offered evidence of retail market share, not as a demonstration of an ownership of underlying facilities, but to show the ease by which interexchange carriers ("IXCs") can change underlying service providers without disrupting end user relationships,
- That evidence of collocation is offered to, and in fact does, demonstrate the substantial competitive pressure on Ameritech's provision of dedicated switched transport.

In addition, Dr. Aron introduces a new study, prepared under her supervision, which strikingly demonstrates that, even assuming a 5% annual Ameritech price decrease, there is strong financial incentive for competitors to extend existing known fiber networks to customer locations that account for over 90% of Ameritech's high capacity revenue in the Chicago LATA. Since the full extent of existing competitive networks is not known to Ameritech, it is likely that the expansion would, in many instances, be less costly than assumed in the study and the payback for competitors would be even greater. Moreover, if Ameritech were to fail to lower prices (or instead raise prices), the financial incentives for competitors would only increase. Thus, the competitive pressure for Ameritech to maintain prices at a reasonable level is real. In this analysis, full consideration is given to any alleged "penalty" that IXCs would incur as a result of terminating contracts for Ameritech's services. Moreover, as Dr. Aron explains, Ameritech's termination liability provisions do not "penalize" a customer for ending a term arrangement. Instead, the customer pays only at the rate applicable to the period of time for which the service was actually taken.

In addition, Dr. Aron examines Ameritech's pricing behavior and concludes that, given the structure and history of current regulatory restraints on that pricing, it is logical and

consistent with that of a firm in a competitive market and simply demonstrates the need for regulatory relief to permit a more logical and economic response to that pressure.

Finally, Dr. Aron shows that claims that regulatory relief will result in cross-subsidizing or predatory behavior by Ameritech lack any basis in logic or economic reality. Ameritech has no ability to raise rates of other regulated services to recover any losses in the Chicago LATA. Moreover, within the LATA itself, the build-out study demonstrates that the ability to raise prices to customers unserved by competitors today is constrained by the increased financial incentive that that would provide for the expansion of competitive networks. Finally, the likelihood of predatory conduct is extremely low given the virtual impossibility of recouping losses in the future because of the permanence of competitive network capacity.

The bottom line, therefore, is that the facts demonstrate that the vast bulk of Ameritech's high capacity revenue in the Chicago LATA is reasonably subject to being "migrated" to alternative providers and that, thus, Ameritech lacks market power in the provision of high capacity services in the LATA.

II. SECTION 10 HAS NO "CHECKLIST."

AT&T criticizes Ameritech's petition for failure to demonstrate that it has complied with "the market opening requirements contained in section 251(c) of the Act."[8] Amazingly, but not suprisingly, AT&T argues that "de-regulating" Ameritech services would provide "another incentive to avoid complying with its statutory obligation to open its monopoly."[9] AT&T's position is misguided.

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[8] AT&T at 20.

[9] *Id.;* see also Focal at 2, McLeod at 2.

First, Ameritech vigorously denies that it is not complying with its obligations under Section 251(c).[10] Attachment B shows the pattern of explosive growth in competitive activity in the provision of local exchange service in the Ameritech region -- evidence in terms of the numbers of end office integration trunks, unbundled loops, and resold lines. The growth in these numbers would simply not have occurred if Ameritech had not been working in good faith to fulfill its obligations under Section 251(c).

Further, however, and more importantly, there is absolutely no statutory justification for the imposition of a Section 271-like "checklist" as a prerequisite for granting of Section 10 relief. That is quite simply because Congress did not intend there to be such a checklist.

Clearly, if the criteria articulated in Section 10 are satisfied, the statute requires the Commission to forbear. The Commission does not have authority to impose additional requirements. Nor should it. If regulation is not necessary to ensure just and reasonable rates or to protect consumers and if, as Dr. Aron notes, forbearance is consistent with the public interest because it will enhance the competitive process and benefit customers,[11] then it would not only be unlawful for the Commission to refuse to grant Ameritech's request, it would also be bad public policy because it ultimately would preclude customers from obtaining the benefits of full

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[10] In that regard, AT&T's allegations of Ameritech "bad acts" in connection with collocation is just one aspect of this "red herring" technique of commentary. (AT&T comments, Bennett affidavit at ¶¶10 &11) The collocation of equipment with switching functionality or equipment that does not comply with appropriate electromagnetic interference ("EMI") limitations is an issue growing out of the Commission's recent order in its Section 706 proceeding. (FCC 99-48, CC Docket No. 98-147, released March 31, 1999.) Despite its irrelevance to the Commission's consideration of Ameritech's petition, AT&T's allegations miss the mark. They have no bearing on the fact that competitors still have a substantial share of the high capacity business in the Chicago LATA and that, as shown in the attached build-out study, they can economically address more than 90% of Ameritech's high capacity revenues in ways that do not even involve collocation.

[11] See Aron Report, included with Ameritech's Petition, at 9-11.

competition on economically rational terms.

The claims that the Section 10 list of requirements should be expanded, therefore, must be considered for what they are -- efforts of competitors to insulate themselves from fair competition by Ameritech. Granting those claims would only continue regulatory distortions of the competitive process that ultimately harm customers.

III. CONCLUSION

Section 10 is the embodiment of Congress's recognition that unnecessary regulation is harmful in a competitive market. Section 10 requires the Commission to eliminate regulation that is no longer necessary to ensure that rates and practices are just, reasonable, and not unreasonably discriminatory.

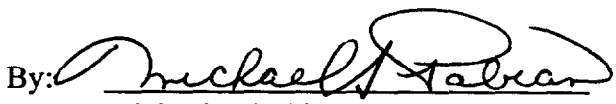
In its petition and in this reply, Ameritech has brought forth evidence that demonstrates that the market for high capacity services in the Chicago area is vigorously competitive -- that market participants are well-financed and experienced competitors; that competitors have captured a significant and growing share of the market; that customers for high capacity services are large and sophisticated purchasers of telecommunication services who are not hesitant to switch providers; and that sufficient competitive facilities are available or can be easily constructed to compete for customers' high capacity business. Simply put, Ameritech lacks market power in the provision of high capacity services in the Chicago LATA. In that light, competition itself, without dominant carrier regulation, is sufficient to constrain any ability that Ameritech might have otherwise had to impose unreasonable prices or other terms and conditions of service.

Section 10 also requires that the Commission forbear from regulation when it is

consistent with the public interest. In this case, allowing Ameritech to compete on the same basis as other providers of high capacity service serves the public interest by enhancing the competitive process itself. Ameritech alone, among all the providers of high capacity services, is hampered by regulations that prohibit it from competing on economically rational basis. That distorts competition and permits other providers to charge supra-competitive rates. Eliminating these regulatory hurdles would permit Ameritech to initiate price reductions, to introduce new services, and to respond quickly and creatively to competition -- and this benefits customers.

Therefore, the Commission should grant Ameritech's petition and forbear from regulating Ameritech as a dominant carrier in its provision of high capacity services in the Chicago LATA.

Respectfully submitted,

By: 

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